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IN THE SUPREME COURT OF
THE UNITED STATES

October Term, 1974

No. 74-585

THE STANJIM COMPANY, et al.,

Petitioners

vs.

BOARD OF REVISION OF MAHONING COUNTY, et al.,

Respondents

PETITION FOR WRIT OF CERTIORARI

To the Supreme Court of Ohio

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IN THE SUPREME COURT OF
THE UNITED STATES

October Term, 1974
No. _____

THE STANJIM COMPANY
WEDGEWOOD PLAZA, INC.
FEDERAL BUILDING CORPORATION
FRED SHUTRUMP
FRED SHUTRUMPT, SR. AND J.W.
WEDGEWOOD PLAZA, INC.
ROMILE REALTY COMPANY
THE FREEN GRIAR APARTMENTS
THE K.L.W. REALTY COMPANY
NEWPORT GLEN APARTMENTS COMPANY
THE SHUTRUMP UNITED ENTERPRISES, INC.
THE WEDGEWOOD 129 CORPORATION
WEDGEWOOD PLAZA, INC.
BEN FELDMAN, et al.
THE D.M.B. REALTY COMPANY
THE PLAZA WEST, INC.
WEDGEWOOD APARTMENTS, INC.
WEDGEWOOD APARTMENTS, INC.
THE COLLEGE APARTMENTS
PHILIP A. LEVY
THE CAMBRIDGE SQUARE, INC.
THE CAMBRIDGE SQUARE, INC.
THE BINAMA REALTY COMPANY
THE MAR-IND REALTY COMPANY
PETRAKOS AND HARRIS

HAROLD L. LIBBY
THE STANJIM COMPANY
THE STANJIM COMPANY
THE STANJIM COMPANY
THE CHARLES SHUTRUMP AND SONS COMPANY
ZEV REALTY, INC.
MIDZED REALTY COMPANY
FAY MALKOFF
THE VENICE HOMES, INC.
B. RICHARD BURDMAN
NYRON C. WICK ESTATES COMPANY

Petitioners

vs.

BOARD OF REVISION OF MAHONING COUNTY
STEPHEN R. OLENICK
AUDITOR OF MAHONING COUNTY

Respondents

PETITION FOR WRIT OF CERTIORARI
To the Supreme Court of Ohio

Petitioners pray that a Writ of Certiorari issue to review the judgment entered by the Supreme Court of Ohio affirming the decision of The Board of Tax Appeals of Ohio,

being Ohio Supreme Court Cause No. 73-886, on the 12th day of June, 1974, and the order overruling the application for rehearing entered on August 21, 1974.

OPINIONS BELOW

The opinion of the Supreme Court of Ohio is officially reported in Volume 38, Ohio State 2d at Page 233 (Appendix A).

JURISDICTION

The judgment of the Supreme Court of Ohio was entered on June 12, 1974 (Appendix B). Rehearing was denied on August 21, 1974 (Appendix C).

Jurisdiction of the Supreme Court of the United States is invoked pursuant to 28 U.S.C. Section 1257 (3), involving Federal Constitutional Questions.

QUESTIONS PRESENTED

1. Does the change by a County Board of Revision, applied retroactively, of a long-standing procedural policy relating to the completion of real estate tax complaint forms after the time for filing has expired, thereby depriving real estate taxpayers of a hearing on

the merits on pending complaints violate the provisions of Section I of the Fourteenth Amendment to the Constitution of the United States?

2. Following a retroactive change of a long-standing procedural policy relating to the completion of real estate tax complaint forms, does the County Board of Revision, charged with hearing such complaints violate the provisions of Section I of the Fourteenth Amendment to the United States Constitution by hearing some complaints while denying hearings to other complainants for the same year where the degree of completion of the complaint forms does not vary from those wherein hearings have been denied?

3. When the Board of Tax Appeals, charged with appellate jurisdiction of real estate tax complaints as well as supervisory jurisdiction of all real estate tax assessments, has never, over a period of many years, treated the manner of completion of the form of complaint (which with approval of the Board varied among counties) as jurisdictional, does the subsequent ruling of that Board as an appellate body upholding such jurisdictional treatment by a County Board of Revision, with no prior notice to taxpayer complainants and following the expiration of time for filing real estate tax complaints, thereby depriving taxpayers of hearings on their pending complaints violate the provisions of Section I of the Fourteenth Amendment to the Constitution of the United States?

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States
Amendment XIV, Section 1

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF FACTS

Petitioners, for the tax year 1971, filed real estate tax complaints with the Board of Revision of Mahoning County, Ohio, on the form specified by the Board of Tax Appeals of Ohio - BTA Form 1. The forms had been completed in the fashion approved by the Mahoning County Board of Revision for at least nine (9) years prior to 1971. Some time after the period for filing complaints had expired, the Auditor of Mahoning County unilaterally dismissed all complaints filed by Petitioners on the ground that the forms were not completely filled in. It was admitted that for at least nine (9) years including 1971, the year in question, the manner of completion followed by Petitioners had been acceptable and had been practiced by the Auditor's own deputies in assisting taxpayers to file real estate tax complaints. Petitioners'

complaints had been accepted for filing without any objection as to form. The County Auditor made no announcement of any change in policy prior to the dismissal of these complaints.

Petitioners thereupon filed a Mandamus action in the Common Pleas Court of Mahoning County. That Court denied the mandamus, but the Court of Appeals reversed, ruling that the Auditor was required to submit all real estate tax complaints filed to the Board of Revision, pursuant to Ohio Revised Code Section 5715.19.

Thereafter, the Board of Revision, composed of the County Auditor, County Recorder and a County Commissioner, dismissed Petitioners' complaints without notification of a hearing and without holding any hearing on the merits on the ground that the Complaint forms were not sufficiently completed - this despite the fact that prior to the aforesaid decision of the Court of Appeals of Mahoning County, the Petitioners had filed additional information with the Board of Revision to satisfy shortcomings asserted by the Auditor (as a result of the change of policy).

Petitioners appealed the decision of the Board of Revision to the Board of Tax Appeals of the State of Ohio, which affirmed the decision of the Board of Revision. The Petitioners thereupon appealed to the Supreme Court of Ohio which affirmed the Board of Tax Appeals. (The decision of the Supreme Court of Ohio is set forth in Appendix A. The entry of the Supreme

Court of Ohio denying a rehearing, under date of August 21, 1974, is set forth in Appendix C.

The statute of the State of Ohio providing for complaints as to the assessed valuation of real property is Ohio Revised Code Section 5715.19, which requires that the complaint shall state "the amount of overvaluation, undervaluation, discriminatory valuation or illegal valuation complained of . . . ". No other specified information is required by that section. All of Petitioners' thirty-six (36) complaints had the information specified by the statute.

Ohio Revised Code Section 5715.13 (without specifying the time for filing) requires that a Board of Revision shall not decrease any valuation unless the party affected or his agent files a written application under oath showing the facts upon which the claimed decrease should be made. Petitioners, in addition to their complaints, filed such an application before the dismissal by the Mahoning County Board of Revision.

REASONS FOR GRANTING THE WRIT

The policy of the Mahoning Board of Revision to hear complaints completed in the form filed by Petitioners had existed for at least nine (9) years prior to 1971. In fact, as shown by the Briefs Amicus Curiae filed by the Cleveland, Cuyahoga County and Ohio State Bar Associations in support of the Motion for Rehearing of Petitioners,

the practice was statewide. That practice had never been questioned by the Board of Tax Appeals of Ohio, the supervisor of real estate taxation for the State and the appellate board for appeals from Boards of Revision of the Counties.

Good reason existed for that practice. Real estate tax complaints must be filed within the time provided for the payment of real estate taxes for the first half year. There is only a period of a few weeks between the time tax bills are issued and the closing date for payment of the bills. In addition, most commercial property complaints are heard upon extensive expert appraisals which provide Boards of Revision with complete, detailed information about the subject real property. It should also be noted that Boards of Revision have available to them detailed property record cards kept by each County Auditor's Office as required by law for each parcel of real estate in the County. These records indicate the layout of the land and improvement details of construction and the Auditor's valuation of both land and improvements, currently and for the past.

Notwithstanding its long-standing practice concerning the form of complaints, the Mahoning County Board of Revision dismissed Petitioners' complaints without granting Petitioners a hearing. This, admittedly, retroactively changed the Board's procedure. No notice had been given to Mahoning County real estate taxpayers prior to the change. In fact, the Auditor's

own deputies had assisted taxpayers in completing BTA Form No. 1 in the same fashion up to and including tax year 1971, the year involved. Petitioners' complaints were not, however, completed with the assistance of any Deputy County Auditor.

The Supreme Court of Ohio completely discounted this well established procedure notwithstanding its use by county officials themselves in assisting taxpayers. The Court dismissed the contention of Petitioners that such a change in practice violated the requirements of the Fourteenth Amendment to the United States Constitution. It brushed aside, almost peremptorily, Petitioners' claim that such a retroactive change violated the rules of fair play under that amendment. The Ohio Supreme Court treated this contention by adverting to it as a "dubious, albeit locally sanctioned, practice".

In Ohio, all real estate tax complaints must be filed in the County where the real property is located. The Briefs Amicus Curiae demonstrated that the Court was in error in calling it a local practice when, in fact, it was statewide. Cuyahoga County, for example, the largest county in Ohio with about 25% of the population, had an existing County Prosecutor's opinion that the degree of completion of the form of complaint in issue satisfied legal requirements.

The Ohio Supreme Court further denied the Constitutional claims on the basis that jurisdictional requirements of the statutes as construed

by the Court (though not specified in the statutes themselves) required fully completed complaint forms. The Court accomplished this by reference to the statute authorizing the Board of Tax Appeals to prescribe forms which, according to the Court's decision, could jurisdictionally require more than the complaint statute itself. No prior decisions of the Ohio Supreme Court or the Board of Tax Appeals, as the appellate body hearing appeals from Boards of Revisions, had ever indicated such a position. Thousands of similar complaints have been processed by the various Boards of Revision of the State of Ohio with appeals determined by the Board of Tax Appeals with no mention of defective jurisdiction by reason of the failure to complete the form of the complaint. As a result of the Court's decision, thousands of complaints of property owners, relying on the practice, have been and are being dismissed by the various Boards of Revision of the Counties of the State of Ohio.

Based upon the Mahoning County practice and the State practice, Petitioners contend that the Fourteenth Amendment requires that notice of a change of such long standing practice must be given to taxpayers in time to comply with it; that a change in policy after the time for filing real estate tax complaints had expired denied Petitioners due process of law under the Fourteenth Amendment.

In this case, the Board of Tax Appeals itself did not mandate full completion of the form. It did affirm the dismissal by the Board of Revision on the basis that the Board had a certain amount of discretion to hear or not to hear complaints filed with the form completed as herein. Notwithstanding this decision of the Board of Tax Appeals, there had not been one case theretofore where the Board had noted, or held that such a complaint form was inadequate. Nor did the Board even attempt to cite such a case in its decision in this matter.

In Petitioners' Motion for Rehearing, the Supreme Court was requested to seek from the Board of Tax Appeals, as the appellate body on real estate tax appeals and as the supervisor of real estate taxation, a report to the Court of its knowledge regarding the prevalence of this practice, i.e., the completion of complaints and as to whether or not this style of complaint was in customary usage throughout the State of Ohio. The Court apparently rejected this proposal by its denial of the Motion for Rehearing.

The upshot of the Supreme Court's decision is that it has raised to absolute jurisdictional level the form of the Board of Tax Appeals which that Board itself had never accorded to its own form, which the appropriate statutes do not require, and which form varies among the counties.

The result has been that real estate taxpayers of Ohio who have followed procedure accepted and acceptable for years, and even employed by government officials assisting taxpayers in filing real estate tax complaints, have been denied even the opportunity of a hearing on their real estate tax complaints. Without notice of any kind and faced with retroactive application, taxpayers have had their claims of overvaluation, illegal valuation and discriminatory valuation dismissed without a hearing and with no opportunity to present their evidence. Even though real estate tax complaints must be filed within a comparatively short period and notwithstanding the fact that most such complaints are filed by laymen, the requirements as set by the Court are a good deal more vigorous than required under modern pleading procedures for lawyers. But the real bone of contention with the Court's decision is its retroactive application.

Modern Administrative Procedure Acts require administrative agencies to give notice of a change of policy or procedure. While the Board of Tax Appeals had by rule promulgated Form 1, it had never interpreted full completion of that Form as jurisdictional. Due process should require that such a major change in policy must be preceded by notice of the change in procedure. Taxpayers for years had filed in accordance with an accepted norm. A retroactive change of that norm unfairly deprives them of their right to taxation of their real property by uniform rule according to value, the constitutional rule in Ohio (Article XII, Section 2 of the Ohio Constitution).

Following the decision of the Ohio Supreme Court, Petitioners' counsel learned that in at least two (2) cases for 1971, the Mahoning County Board of Revision had granted relief to complainants whose form of complaint was not completed in any greater degree than Petitioners. The Auditor had testified that those complaints as well as all others filed in similar fashion would be treated in accordance with the decision in Petitioners' case. Counsel's request following the decision of the Ohio Supreme Court but before the denial of rehearing, to the County Auditor to disclose the handling of all tax complaints for 1971 was refused. Petitioners believed that such an indication of discriminatory treatment constituted an additional ground for a rehearing. It must be assumed that the Supreme Court of Ohio likewise denied this contention in denying the Motion for Rehearing. Where patent discrimination had surfaced, equal protection cried out for recognition but went unheard.

This court stated in Hannah v. Larche, 363 U.S. 420, 4 L.ed. 2d 1307, 80 S. Ct. 1502, at page 442:

"Due process is an elusive concept; its exact boundaries are undefinable and its context varies according to specific factual contexts."

The foundation stone has been "fair play". This Court has itself held, as to the federal government, that citizens can act "in justifiable reliance upon the advice of agents" of the government. Moser v. U.S., 341 U.S. 41, 95 L.ed. 729, 71 S. Ct. 533 (1951).

The Ohio Supreme Court has held that, under both the Ohio and United States Constitutions, a real property owner is entitled to be assessed by uniform rule according to value. The Frederick Building Co. v. Board of Revision of Cuyahoga County, et al., 13 Ohio St (2d) 59, 42 O.O. (2d) 104 (1968).

It follows that there is a constitutional right to be heard and that the failure to grant a hearing deprives a party of due process of law. Fuentes v. Shevin, 407 U.S. 67, 32 L.ed. 2d 556, 92 S. Ct. 1983 (1972), Rehearing denied, 409 U.S. 902, 34 L.ed. 2d 165, 93 S.Ct. 177.

Due process and equal protection of the law require that legal procedures be reasonable and that rights of parties shall not be forfeited by unreasonable, arbitrary and capricious procedures. Nebbia v. New York, 291, U.S. 502, 78 L.ed. 940, 54 S. Ct. 505 (1933).

Under the Ohio Supreme Court's decision, the jurisdiction to hear complaints could be expanded or contracted simply by means of changing the complaint form.

Petitioners' reliance on a long-standing procedure followed by agencies of the state, in assisting parties in filing their complaints with the agencies, as well as these same agencies in processing real estate tax complaints, entitled petitioners to a hearing on their complaints.

Petitioners believe that the decision of the Ohio Supreme Court denying them a hearing on their constitutional right to uniform assessment of their real estate, because of their following such a procedure, denied them due process of law and deprived them of the equal protection of the law.

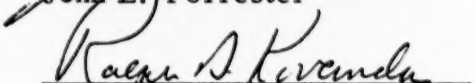
Petitioners further believe that the processing of some complaints by the Board of Revision, filed in the same form as Petitioners' complaints, while dismissing the Petitioners' complaints, constituted invidious discrimination which entitled the Petitioners to a hearing on their complaints.

CONCLUSION

For the above reasons, we respectfully submit that this petition for a writ of certiorari be granted.

FORRESTER & KOVANDA

John E. Forrester



Ralph D. Kovanda

APPENDIX A

OPINION OF THE SUPREME COURT OF OHIO

Stanjim Co. v. Bd. of Revision
38 Ohio St. 2d 233

Taxation - County board of revision - Complaint as to assessment of real property - R. C. 5715.13 and 5715.19 - Requirements - Full compliance necessary - Dismissal for failure to comply - Board of Tax Appeals - Forms prescribed, to be used, when.

No. 73-886 - Decided June 12, 1974

Appeal from the Board of Tax Appeals.

In the early part of 1972, appellants filed with the Auditor of Mahoning County, 38 complaints as to the assessments of their real property for the tax year 1971. Those complaints were on Board of Revision Form No. 1 (hereinafter BTA Form 1), as prescribed by the Board of Tax Appeals, but a large portion of the form, entitled PERTINENT FACTS, was left incomplete. In its place, appellants had typewritten: "All other pertinent data substantiating this complaint of over valuation will be presented at requested hearing."

The auditor, by letter dated April 5, 1972, rejected appellants' complaints for failing to comply with R. C. 5715.13. Appellants then filed

a mandamus action, in the Court of Common Pleas, to compel the auditor to present their complaints to the board of revision. Upon appeal from a dismissal of their petition for mandamus, appellants prevailed, and the Court of Appeals held "that under R. C. 5715.19 the county auditor has a mandatory duty to present all complaints as to the valuation or assessment of real property to the county board of revision." State, ex rel. Wedgewood 129 Corp., v. Olenick (1973), 36 Ohio App. 2d 111, 113, 303 N. E. 2d 101. The court noted that "the question of whether these complaints were defective because they were incomplete was not property before the county auditor when he refused to present them to the board of revision, and they are not an issue in this case."

No appeal was taken from that decision, and, in accordance therewith, the auditor presented appellants' complaints to the board of revision. Meanwhile, each of the appellants had filed, with the board of revision, an additional document entitled "Application for Decrease in Valuation," which purported to satisfy the requirements of R. C. 5715.13.

By letter dated April 18, 1973, the board of revision dismissed, sua sponte, all of appellants' complaints on the grounds that they "did not comply with requirements of the Board of Tax Appeals for filing * * * and the BTA Forms 1 were not sufficiently completed." This decision was appealed to the Board of Tax

Appeals which, on October 5, 1973, reaffirmed the lawfulness of the board of revision's action.

The cause is now before this court upon an appeal as of right.

Messrs. Forrester & Kovanda and Mr. Ralph D. Kovanda, for appellants.

Mr. Vincent E. Gilmartin, prosecuting attorney, and Mr. Dennis Haines, for appellees.

Per Curiam. This appeal presents for our determination the question left unanswered by the Court of Appeals in State, ex rel. Wedgewood 129 Corp., v. Olenick, supra. Appellants claim that failure to fully complete BTA Form 1 cannot be the basis for dismissal of their real property assessment complaints when there are "home-drawn" documents before the county board of revision sufficient to satisfy the requirements of R. C. 5715.19 and 5715.13. Appellees reply, in sum, that BTA Form 1 has been drawn by the Board of Tax Appeals to conform to the requirements of R. C. 5715.19 and 5715.13; that compliance with those statutes is a jurisdictional prerequisite to obtaining relief from a county board of revision; that failure to fully complete BTA Form 1 subjects an applicant's complaint to summary dismissal; and BTA Form 1 includes the admonition that "if complainant does not comply with these sections, the board is without jurisdiction to consider the complaint."

There can be no dispute over the authority of the Board of Tax Appeals to prescribe and furnish, pursuant to R. C. 5715.29 and 5715.30, blank forms for complaints as to the assessment of real property. Indeed, R. C. 5715.30 places a mandatory duty upon the board to provide such forms, and R. C. 5715.29 requires the board to cause "the forms prescribed by it to be observed and used."

Two more basic issues, however, remain to be considered: (1) Is full compliance with R. C. 5715.19 and 5715.13 necessary to confer jurisdiction upon a county board of revision to consider a real property overassessment claim? (2) Is BTA Form 1 a reasonable and lawful reflection of the data requirements of those statutes?

R. C. 5715.19 provides, as pertinent:

"* * * Any taxpayer may file * * * a complaint as to the valuation or assessment of his own or another's real property * * *."

"* * * Each complaint shall state the amount overvaluation, undervaluation, discriminatory valuation, or illegal valuation complained of * * *."

R. C. 5715.13 provides:

"The county board of revision shall not decrease any valuation complained of unless the party affected thereby or his agent makes and

files with the board a written application therefor, verified by oath, showing the facts upon which it is claimed such decrease should be made." The Board of Tax Appeals has read the above-quoted statutory language to mean that when a decrease in property valuation is sought, a party must state the valuation complained and must aver facts under oath to support his requested decrease. With that interpretation we have no quarrel. We further agree that full compliance with R. C. 5715.19 and 5715.13 is necessary before a county board of revision is empowered to act on the merits of a claim.

The next question involves BTA Form 1 itself. As noted before, the Board of Tax Appeals has unquestioned authority to promulgate such a form. We have studied carefully the questions asked on BTA Form 1, and find them to be wholly reasonable, nonoppressive, and clearly designed to elicit information required by R. C. 5715.19 and 5715.13. This is not to say that the data requested represents the sum total of all information that might rightfully be considered by a county board of revision at a hearing on an applicant's assessment complaint. The form is brief, and designedly so. It is meant to expedite orderly administrative process. It is also intended, in the words of the Board of Tax Appeals, "to give the board of revision an opportunity to investigate the truthfulness of said alleged facts prior to hearing." For these reasons, we find that BTA Form 1 represents a lawful interpretation of the minimal, data requirements of R. C. 5715.19 and 5715.13.

Appellants make much of the fact that it had been the past practice of the board of revision to accept partially completed BTA Forms 1 as sufficient, and conclude that any change in this policy should have been preceded by some sort of notice. Although one might feel some sympathy for appellants, we are compelled to point out that the cautionary statements of the reverse side of BTA Form 1 should have alerted them to the hazards of relying upon such a dubious, albeit locally sanctioned, practice.

Appellants finally complain that their constitutional and statutory rights to have their real property assessed at a uniform percentage of its market value have been violated. Because they have failed to complete BTA Forms 1, and thereby comply with the reasonable procedural prerequisites of the Board of Tax Appeals, appellants have foregone the available opportunity to have their claims heard on the merits.

For the foregoing reasons the decision of the Board of Tax Appeals is reasonable and lawful and, therefore, is affirmed.

Decision affirmed.

O'Neill, C. J. Herbert, Corrigan, Stern, Celebrezze, W. Brown and P. Brown, JJ., concur.

APPENDIX B

JUDGMENT OF THE SUPREME COURT OF OHIO

(Entered June 12, 1974)

This cause, here on appeal from the Board of Tax Appeals, was heard in the manner prescribed by law. On consideration thereof, the decision of the Board of Tax Appeals is affirmed for the reasons stated in the opinion herein.

It is ordered than an entry be issued to the Board of Tax Appeals to carry this judgment into execution.

APPENDIX C

ORDER OF THE SUPREME COURT OF OHIO DENYING REHEARING.

(Entered August 21, 1974)

It is ordered by the court that rehearing in this case is denied.

APPENDIX D

R. C. 5715.13 - Application for Decrease in Valuation

The county board of revision shall not decrease any valuation complained of unless the party affected thereby or his agent makes and files with the board a written application therefor, verified by oath, showing the facts upon which it is claimed such decrease should be made.

APPENDIX E

R. C. 5715.19 - Complaints; tender of tax; determination of common level of assessment

A complaint against any valuation or assessment which appears upon the tax duplicate of the then current year shall be filed on or before the twentieth day of December, or on or before the time limited for payment of taxes for the first half year, extended under section 323.17 of the Revised Code. Any taxpayer may file such a complaint as to the valuation or assessment of his own or another's real property, and the board of county commissioners, the prosecuting attorney, or the treasurer of any county, any board of township trustees, any board of education, or the mayor or legislative authority of any municipal corporation in any county may file such a complaint. The county auditor shall present to the county board of revision all complaints filed with him, and each board shall notify any such complainant and also the property owner, if his address is known, when the complaint is filed by one other than the property owner by registered or certified mail, not less than ten days prior to the hearing, of the time and place the same will be heard, and shall hear and render its decision on such complaint within ninety days after the filing thereof with the said board.

The determination of any such complaint shall relate back to the date when the lien for taxes for the current year attached or the date as of which liability for such year was determined, and liability for taxes for such year and each succeeding year until the complaint is finally determined and for any penalty for nonpayment thereof within the time required by law shall be based upon the valuation or assessment as finally determined. Each complaint shall state the amount of overvaluation, undervaluation, discriminatory valuation, or illegal valuation complained of, and the treasurer may accept any amount tendered as taxes upon property concerning which a complaint is then pending, computed upon the claimed valuation as set forth in the complaint, and if such tender is not accepted no penalty shall be assessed because of the nonpayment thereof. The acceptance of such tender shall be without prejudice to the claim for taxes upon the balance of the valuation or assessment. A like tender may be made, with like effect, in case of the pendency of any proceeding in court based upon an allegedly excessive, discriminatory, or illegal valuation. If a complaint filed under this section for the current year is not determined by the board within the time prescribed for such determination, the complaint and any proceedings in relation thereto shall be continued by the board as a valid complaint for any ensuing year until such complaint is finally determined by the board. In such case, the original complaint shall continue in effect without further filing by the original taxpayer, his assignee, or any other person or entity authorized to file a complaint under this section.

Upon request of a complainant, the board of tax appeals shall determine the common level of assessment of real property in the county for the year stated in the request, which common level of assessment shall be expressed as a percentage of true value. Such determination shall be made on the basis of the most recent available sales ratio studies of the board of tax appeals and such other factual data as the board deems pertinent. Any valuation which varies from said common level of assessment by more than ten per cent thereof is prima facie discriminatory.